

STATEMENT OF EMERGENCY

CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION CHAPTER 5. DIVISION OF RECYCLING

INFORMATIVE DIGEST

The recent passage of AB 3056 (Chapter 907, Statutes of 2006) amended Section 14549.1 of the Public Resources Code (PRC) under the California Beverage Container Recycling and Litter Reduction Act (Act). AB 3056 authorizes the Department of Conservation (Department) to pay up to \$15 million annually in quality incentive payments to registered curbside programs and certified entities to improve the quality and marketability of empty glass, plastic and aluminum beverage containers collected by curbside recycling programs, or dropoff or collection programs.

The Public Resources Code Section 14549.1 was enacted by AB 1244 (Chapter 817, Statutes of 1999). AB 1244 authorized the Department to establish a Quality Glass Incentive Payment (QGIP) Program. The Department was authorized to expend up to \$3 million annually in quality glass incentive payments to operators of curbside programs for color-sorted glass beverage containers that were substantially free of contaminants. Effective January 1, 2007, AB 3056 repealed the QGIP Program and made provisions for the Department to establish a Quality Incentive Payment (QIP) Program to pay quality incentive payments for empty glass, plastic and aluminum beverage containers sorted and/or cleaned, making current QGIP regulatory provisions obsolete.

FINDING OF NECESSITY

Under the new QIP Program, empty glass, plastic and aluminum beverage container materials collected by registered curbside programs or dropoff or collection programs are eligible for quality incentive payments. It is estimated that a total of approximately 9,000 tons of aluminum, 38,000 tons of plastic and an additional 13,000 tons of glass may be eligible for the new QIP Program payments. The Division is authorized to make payments of up to \$60 per ton for glass, \$180 per ton for plastic, and \$125 per ton for aluminum to certified entities meeting all specified criteria determined by the Department. This new program creates a fiscal incentive for registered curbside programs and certified entities that sort and/or clean these three container material types and remove contaminants. This program may increase the amount of materials that curbside and drop-off or collection programs recover from their facilities through increased monetary incentives. In order to implement the QIP Program for all three container material types, amendments to the California Code of Regulations

(CCR), Title 14, Division 2, Chapter 5, Sections 2090, 2425, 2530, and new 2850, are necessary to make the CCR consistent with the newly operative statute.

Due to the different methods of processing recycled empty beverage container materials, the emergency regulations are necessary to specify the quality standards certified entities must meet to receive the QIP Program payments. Emergency regulations are also necessary to specify the reporting requirements and provide the reporting and claim forms necessary for eligible curbside and certified program participants to complete and submit to the Department. The reporting requirements and the reporting and claim forms are also necessary for tracking and verifying the reported material volumes and claims for program payment.

Subchapter 2. General Requirements

Article 4. General Accounting Requirements

§ 2090. REPORTS, NOTICES AND CLAIMS SUBMITTED TO THE DIVISION

Subsection 2090 (f) (3) (B) (12): This amendment is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. This new program provides quality incentive payments for plastic, aluminum, and glass empty beverage container materials collected by eligible curbside programs, as well as dropoff or collection programs that meet the requirements of newly amended Section 2850 of the CCR. This amendment clarifies that, for processors and recyclers that use the consolidated shipping reports, eligible plastic, aluminum, and glass must be identified on this report to claim the new QIP Program payments. The old QGIP box has been replaced with the new QIP box. This will be consistent with proposed amendments to Subsection 2425(e)(5) and 2530(f)(10).

Figure 8: has been amended to delete QGIP and replace it with QIP. This change reflects the changes made in statute by AB 3056 repealing the QGIP Program and the enactment of the QIP Program.

Subchapter 5. Processors

Article 3. Accounting and Reporting Requirements

§ 2425. REPORTING.

Subsection 2425 (e) (5): This amendment is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. This new program provides quality incentive payments for plastic, aluminum, and glass empty beverage container materials collected by eligible curbside programs, as well as dropoff or collection programs that meet the requirements of newly amended Section 2850 of the CCR. This amendment

clarifies that, for processors that use the consolidated shipping reports, eligible plastic, aluminum, and glass must be identified on this report to claim the new QIP Program payments. The old QGIP box has been replaced with the new QIP box. This will be consistent with proposed amendments to Subsections 2090(f)(3)(B)(12) and 2530(f)(10).

Subchapter 6. Recycling Centers

Article 3. Accounting and Reporting Requirements

§ 2530. REPORTING.

Subsection 2530 (f) (10): This amendment is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. This new program provides quality incentive payments for plastic, aluminum, and glass empty beverage container materials collected by eligible curbside programs, as well as dropoff or collection programs that meet the requirements of newly amended Section 2850 of the CCR. This amendment clarifies that, for recyclers that use the Shipping Report (DR-6), eligible plastic, aluminum, and glass must be identified on this report to claim the new QIP Program payments. The old QGIP box has been replaced with the new QIP box. This will be consistent with proposed amendments to Subsections 2090(f)(3)(B)(12) and 2425(e)(5).

SUBCHAPTER 11.5

Old Subchapter 11.5. QUALITY GLASS INCENTIVE PAYMENTS: This deletion is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the quality glass incentive payments through the QGIP Program. All regulations in this subchapter related to QGIP must be deleted. This will be consistent with proposed new Subchapter 11.5.

New Subchapter 11.5. QUALITY INCENTIVE PAYMENTS: This addition is necessary to reflect the changes made in statute by AB 3056. AB 3056 enacted the quality incentive payments through the new QIP Program. It is necessary that all articles and regulations regarding quality incentive payments are established under new Subchapter 11.5 QUALITY INCENTIVE PAYMENTS.

Old Article 1. General Requirements: This deletion is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. Old Article 1. General Requirements for QGIP are repealed. This will be consistent with the proposed new Article 1. General Requirements.

New Article 1. General Requirements: has been added to new Subchapter 11.5 QUALITY INCENTIVE PAYMENTS to reflect the changes made in statute by AB 3056. It is necessary to clarify and establish general regulatory requirements that comply with and implement the recent statutory changes made by AB 3056.

Therefore, it is necessary that all proposed regulations regarding quality incentive payments be established under this proposed new Article 1. General Requirements.

SECTION 2850

Old Section 2850: deletion is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. All regulations under this old Section 2850 related to the QGIP Program are repealed. Therefore, all regulatory guidelines under old Section 2850 must be deleted. This deletion will be consistent with the proposed new Section 2850.

New Section 2850: This new Section is necessary to reflect the changes made in statute by AB 3056. AB 3056 repealed the QGIP Program and enacted the QIP Program. Because all regulations prior to AB 3056 in old Section 2850 were based on QGIP, it is necessary that all new QIP regulations be established under the new Section 2850. This is will be consistent with deleted old Section 2850.

New Subsection 2850 (a): This new Subsection is necessary to reflect AB 3056 requirements. This new subsection clarifies that the Division may pay a quality incentive payment to any registered curbside program or entity certified pursuant to the Act, and subject to the availability of funds, for eligible empty glass, plastic and aluminum beverage containers collected by either a registered curbside program or a dropoff or collection program.

New Subsection 2850 (a) (1): This new Subsection is necessary to clarify that a quality incentive payment shall be made for empty glass beverage containers that meet the requirements in Section 14549.1(c)(1)(A) and (B) of the Act. Payments shall be made directly to the registered curbside program or certified entity that color sorts the empty beverage containers.

New Subsection 2850 (a) (2): This new Subsection is necessary to clarify that a quality incentive payment shall be made for empty plastic beverage containers sorted by resin type (PET #1, HDPE #2, V #3, LDPE #4, PP #5, PS #6, and OTHER #7) that meet the requirements in Section 14549.1(c)(2)(A) of the Act. This addition provides the standards the resin sorted and cleaned empty plastic beverage containers must meet for payment.

New Subsection 2850 (a) (3): This new Subsection is necessary to clarify that a quality incentive payment shall be made for empty aluminum beverage containers that meet the requirements in Section 14549.1(c)(3)(A) and (B) of the Act. This addition provides the guidelines for post-consumer aluminum can scrap the empty aluminum beverage containers must meet.

New Subsection 2850 (b): This new Subsection is necessary to establish quality incentive payment reporting guidelines for the empty beverage containers that

meet the quality specifications pursuant to Subsection 2850 (a) (1), (2), and (3). This new Subsection will inform registered curbside programs and certified entities that for eligible empty beverage container material sorted and/or cleaned prior to completion of the Shipping Report (DR-6), the registered curbside program or certified entity must be identified on the Shipping Report (DR-6), as specified in Subsection 2425(e), or 2530(f), and the Shipping Report (DR-6) shall constitute the claim for the quality incentive payment. Identification of the sorting facility on the Shipping Report (DR-6) will enable the Division's fiscal intermediary (IKON) to determine the entity that is to be paid for the volume of eligible empty beverage container materials specified.

New Subsection 2850 (c): This new Subsection is necessary to establish quality incentive payment reporting guidelines for empty beverage containers that meet the quality specifications pursuant to subsection 2850 (a) (1), (2), and (3). This new Subsection will inform processors that for eligible empty beverage container material sorted and/or cleaned subsequent to completion of the Shipping Report (DR-6), that it is necessary to complete a Quality Incentive Payment Claim Form (DOR 56) for each calendar month the quality incentive payments are being requested. This will allow the Division to track claims, forecast the amount of eligible materials, calculate the payments per ton, and audit the accuracy of payments made. In addition, the processor that sorts and/or cleans the empty beverage container material will be required to request authorization from the Division to submit claims for quality incentive payments.

New Subsection 2850 (c) (1): This new Subsection is necessary to inform processors that choose to sort and/or clean the eligible empty beverage container material after completion of the Shipping Report (DR-6), that a methodology must be developed by the processor that sorts and/or cleans the empty beverage container materials to attribute the material to the type of program from which it was received. This methodology must be included with the request for approval of an authorization to submit claims for quality incentive payment. This will ensure that the sorted and/or cleaned empty beverage container materials collected from sources other than curbside programs, or any dropoff or collection programs are excluded from the amount claimed.

New Subsection 2850 (c) (2) (A) and (B): This new Subsection is necessary to establish timelines for the Division to inform the applicant regarding the receipt of the request for authorization, or submission of additional information. The Division will be required to notify the applicant in writing within 15 days whether the information submitted is complete, or incomplete. If the information is incomplete, the Division must inform the applicant of the reasons for the deficiency. The period the Division has specified in regulation is sufficient for notification and review of requests for authorization, and provide for a timely process for the applicant that is consistent with other Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling regulatory provisions for review of applications for certification.

New Subsection 2850 (c) (3): This new Subsection is necessary to establish guidelines the Division will use in reviewing a request for authorization to submit claims for quality incentive payments. The Division will be required to review each request for authorization and issue a written approval or denial within 45 days upon determining the application is complete and accepted. The period the Division has specified in regulation is sufficient for notification and review of requests for authorization, and provides for a timely process for the applicant and is consistent with other Title 14. Natural Resources, Division 2. Department of Conservation, Chapter 5. Division of Recycling regulatory provisions for review of applications for certification. The authorization will be valid for a period of three years from the date of approval unless surrendered, or suspended or revoked by the Division. The Division has deemed that a three-year authorization is sufficient length of time to ensure the periodic review by the Division of the methodology used by the processor to claim quality incentive payments.

New Subsection 2850 (c) (4): This new Subsection is necessary to establish and inform the processor that sorts and/or cleans the empty beverage container materials of the Division's criteria that will be used to deny a request for authorization, or for suspending or revoking an approved authorization.

New Subsection 2850 (c) (4) (A): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials that a request for authorization may be denied, or an approved authorization may be suspended or revoked if empty beverage containers that are received from entities other than registered curbside programs, or dropoff or collection programs are not excluded from the quality incentive payment claim. Statute specifies that quality incentive payments be paid only on material collected by registered curbside programs, or dropoff or collection programs. The processor that sorts and/or cleans the empty beverage container materials must demonstrate their ability to ensure the exclusion of non-curbside, or non-dropoff or collection program materials from the quality incentive payment claims.

New Subsection 2850 (c) (4) (B): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials that a request for authorization may be denied, or an approved authorization may be suspended or revoked if they are unable to account for each incoming load of empty beverage containers. This will ensure that only eligible materials are claimed, and allow the Division to track and audit materials and payments made for the empty beverage containers.

New Subsection 2850 (c) (4) (C): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials that a request for authorization may be denied, or an approved authorization may be suspended or revoked if claims are not based on the sorted and/or cleaned weight of the empty beverage container material. This Subsection will implement the statutory provision that restricts the payment of quality incentive payments to sorted and/or cleaned empty beverage containers.

New Subsection 2850 (c) (4) (D): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials that a request for authorization may be denied, or an approved authorization may be suspended or revoked if the required records are not maintained. The maintenance of these inventory records allows the Division to track the materials shipped and received, thereby enhancing the ability of the Division to audit and ensure the accuracy of the quality incentive payments made for the sorted and/or cleaned empty beverage container materials.

New Subsection 2850 (c) (4) (E): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials that a request for authorization may be denied, or an approved authorization may be suspended or revoked if the processor that sorts and/or cleans the empty beverage container materials has been found to be in violation of the Act or regulations. The ability of the Division to deny, suspend, or revoke authorization to file a claim will encourage compliance with provisions contained in the Act and regulations.

New Subsection 2850 (c) (5): This new Subsection is necessary to inform the processor that sorts and/or cleans the empty beverage container materials of the reconsideration process that is available if the Division denies, suspends, or revokes an authorization to submit claims for quality incentive payments. The processor that sorts and/or cleans the empty beverage container materials will be required to submit a written request for reconsideration within 30 calendar days of being notified of a denial, and include the information specified in paragraphs (A) through (C) of this subsection.

New Subsection 2850 (c) (5) (A): This new Subsection is necessary to inform the processor that, with the request for reconsideration, they must include a copy of the notice of denial, suspension, or revocation that is sent by the Division. This will ensure that the Division reviews information regarding the correct processor and accurately addresses the grounds for denial, suspension, or revocation.

New Subsection 2850 (c) (5) (B): This new Subsection is necessary to inform the processor that, with the request for reconsideration, they must include a detailed explanation of their proposed grounds for reconsideration. This will allow the Division to effectively and accurately review and address the basis of the request for reconsideration.

New Subsection 2850 (c) (5) (C): This new Subsection is necessary to inform the processor that, with the request for reconsideration, they must include any documentation that supports the request. This will allow the Division to effectively and accurately review and address the basis of the request for reconsideration.

New Subsection 2850 (c) (6): This new Subsection is necessary to establish a time period in which the Division must make a determination regarding any

request for reconsideration of a denial, suspension, or revocation of an authorization to submit claims for quality incentive payments. The Division has deemed that a time period of twenty (20) calendar days is sufficient to send the processor a written decision on the request for reconsideration of a denial, suspension, or revocation of an authorization to submit claims for quality incentive payments. This will hold the Division accountable, and ensure the prompt review of any such request.

New Subsection 2850 (d): This new Subsection is necessary to inform processors, that choose to submit claims, of the claim process requirements to be eligible for QIP Program payments.

New Subsection 2850 (d) (1): This new Subsection is necessary to inform processors, that choose to submit claims, of the time frame required for submission of the Quality Incentive Payment Claim Form (DOR 56). These time frames are necessary to allow sufficient time for both the participant to submit necessary information, and the Division to review and process the claims accurately. To encourage the prompt and accurate submission of claims, claimants are informed that late or incomplete claims may be denied.

New Subsection 2850 (d) (2): This new Subsection is necessary to inform processors, that choose to submit claims, of the information that will be required on the Quality Incentive Payment Claim Form (DOR 56). The Quality Incentive Payment Claim Form (DOR 56) must include all of the information specified in paragraphs (A) through (G) of this subsection.

New Subsection 2850 (d) (2) (A): This new Subsection is necessary to inform processors, that choose to submit claims, to specify the month for which the claim is being submitted. This requirement will assist the Division and processor in maintaining accurate records. This will facilitate the payment of claims and the tracking and auditing of payments.

New Subsection 2850 (d) (2) (B): This new Subsection is necessary to inform processors, that choose to submit claims, to specify the material type for which the claim is being submitted. This information will facilitate the payment process and ensure proper payment. In addition, this information will also assist the Division in tracking and auditing payments to ensure the integrity of the Beverage Container Recycling Fund.

New Subsection 2850 (d) (2) (C): This new Subsection is necessary to inform processors, that choose to submit claims, to include their facility name, mailing address, and certification number to ensure payment is correctly made and to allow the Division to verify that the processor is actually certified. This information will assist the Division in tracking and auditing payments to ensure the integrity of the Beverage Container Recycling Fund.

New Subsection 2850 (d) (2) (D): This new Subsection is necessary to inform processors, that choose to submit claims, to include the name and phone

number of a contact person. This information will facilitate the payment process and ensure proper payment. This information will also assist the Division in tracking and auditing payments to ensure the integrity of the Beverage Container Recycling Fund.

New Subsection 2850 (d) (2) (E): This new Subsection is necessary to inform processors, that choose to submit claims, to include the redemption weight to tenths of tons of the empty beverage container materials on the Quality Incentive Payment Claim Form (DOR 56). This will allow the Division to determine the proper payment to be made.

New Subsection 2850 (d) (2) (F): This new Subsection is necessary to inform processors, that choose to submit claims, to specify that the authorized representative, of the certified processor, must include their signature and title under penalty of perjury on the Quality Incentive Payment Claim Form (DOR 56). This allows the Division to determine legitimate claims, and to track and audit payments made.

New Subsection 2850 (d) (2) (G): This new Subsection is necessary to inform claimants that the Quality Incentive Payment Claim Form (DOR 56) must indicate the date the form was signed, under penalty of perjury. This will enhance the ability of the Division and the claimant to accurately track and review claims.

New Subsection 2850 (e): This new Subsection is necessary to clarify the Division's authority to deny or reduce the quality incentive payment if the Division has prevailed in a claim against any registered curbside program or certified entity and money is owed to the Division.

New Subsection 2850 (f): This new Subsection is necessary to inform registered curbside programs and certified entities, that for the purposes of Section 14549.1 of the Act and the proposed QIP regulations, definitions will be provided for clarification. The proposed definitions are specified in paragraphs (1) and (2) of this subsection.

New Subsection 2850 (f) (1): This new Subsection is necessary to clarify the definition of "color sorted glass" for the purposes of Section 14549.1 of the Act and the proposed QIP regulations.

New Subsection 2850 (f) (2): This new Subsection is necessary to clarify the definition of "substantially free of contamination" for the purposes of Section 14549.1 of the Act and the proposed QIP regulations.

Section 14536 (b), PRC has been added to the Authority Section of CCR Section 2850 to cite the Division's authority to adopt emergency regulations to implement PRC Section 14549.1 of the California Beverage Container Recycling and Litter Reduction Act (Act).

FINDING OF EMERGENCY

AB 3056 passed as an urgency measure, with some sections effective on September 30, 2006. However, Section 14549.1 became effective on January 1, 2007. Express statutory authority has been established in Public Resources Code Section 14536, Subsection (b)(1), for the Department to adopt emergency regulations for the purposes of implementing Section 14549.1 of the Act. The Department has determined that to effectively implement the amendments to PRC Section 14549.1 made by AB 3056, it is necessary to promulgate these regulations as emergency.

Amended Section 14549.1 authorizes funding for the Department to establish a QIP Program and pay quality incentive payments to encourage the recycling, cleaning and processing of empty beverage containers into feedstock for manufacturers to use in new products. AB 3056 authorizes the expenditure of up to \$15 million annually in quality incentive payments for the purposes of improving the quality and marketability of empty glass, plastic and aluminum beverage containers collected by curbside recycling programs, or dropoff or collection programs. This emergency regulation is necessary to establish regulatory provisions that comply with and implement the statutory changes made by AB 3056. These proposed regulations will establish the necessary general requirements, including quality standards, reporting and claiming procedures, for those authorized entities that choose to participate and claim quality incentive payments.

The Department has received inquiries from industry regarding the process of submitting claims for quality incentive payments. Industry participants are anticipating the emergency regulations to provide guidelines to participate in the QIP Program. It is critical that these proposed emergency regulations be adopted immediately for the following reasons:

- (1) To ensure that eligible registered curbside programs and certified entities have the opportunity to receive the new fiscal incentives offered;
- (2) To ensure that eligible registered curbside programs and certified entities that clean and/or sort empty beverage container materials understand their responsibilities and requirements regarding eligibility;
- (3) To inform eligible program participants of the claim process to receive QIP Program payments;
- (4) To ensure that all eligible registered curbside programs and certified entities receive proper payment; and
- (5) To ensure that regulations are consistent with newly operative statute.

Without this proposed emergency regulation, quality incentive payments cannot be made to registered curbside programs and certified entities that may wish to clean and/or sort empty beverage container materials in order to receive QIP Program payments. Because the statutory provisions are currently in effect, and industry is relying on these fiscal incentives, the immediate adoption of this proposed emergency regulation is critical to allow registered curbside programs

and certified entities to submit claims for the materials that may have been cleaned and/or sorted and met the proposed requirements in anticipation of receiving quality incentive payments. The Department finds these emergency regulations are necessary to preserve the public peace, health, safety and general welfare of the State of California.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code subsections 14530.5 (b) and 14536 (b).

REFERENCE

Revisions to California Code of Regulations, Title 14, Division 2, Chapter 5, Sections 2090, 2425, 2530, and new 2850 are intended to clarify Public Resources Code Section 14549.1 and 14552.

LOCAL MANDATE

The proposed regulations do not impose a mandate on local agencies or school districts.

COSTS

The proposed emergency regulations will not result in costs or savings to the Department of Conservation, Division of Recycling, because the implementation of statute is financed by the beverage container recycling program itself.

The proposed emergency regulations will not result in either cost or saving to any other State Agency, local agencies or school districts. Furthermore, these proposed emergency regulations will not result in any non-discretionary cost or savings to any local agencies, nor will they result in cost or savings to federal funding for the State, and therefore there are no reimbursable costs.

NOTICE OF EMERGENCY REGULATORY ACTION

The Department of Conservation has complied with the requirement to provide notice of the proposed rulemaking action pursuant to Government Code Section 11346.1 (a) (2).

A copy of the memorandum transmitting the proposed emergency text and the proposed Statement of Emergency to interested parties is included in the emergency rulemaking file.